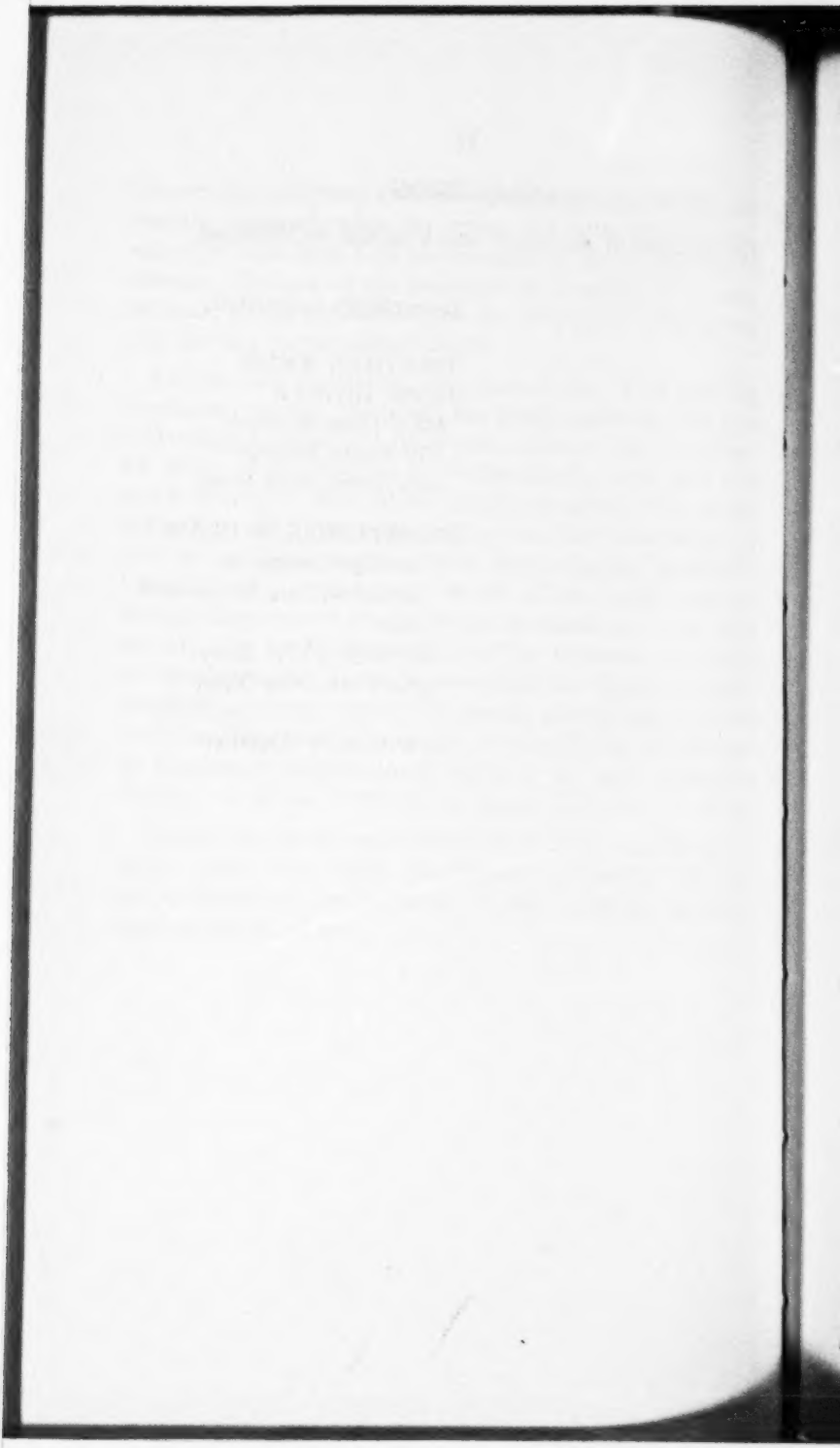

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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 69

GEORGE K. WYMAN, individually and as Commissioner of the State of New York, Department of Social Services, JACK R. GOLDBERG, individually and as Commissioner of the Department of Social Services of the City of New York,

Appellants,

—against—

BARBARA JAMES, individually and on behalf of her minor child MAURICE JAMES, and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, AFSCME, AFL-CIO, *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 977

GEORGE K. WYMAN, individually and as Commissioner of the State of New York, Department of Social Services. JACK R. GOLDBERG, individually and as Commissioner of the Department of Social Services of the City of New York,

Appellants,

—against—

BARBARA JAMES, individually and on behalf of her minor child MAURICE JAMES, and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, AFSCME, AFL-CIO, *AMICUS CURIAE*

Interest of *Amicus Curiae*

The Social Service Employees Union Local 371, AFSCME, AFL-CIO, is the sole and exclusive collective bargaining representative for the social service staff employed in the Department of Social Services of the City of New York. This staff comes under the direct super-

vision of Commissioner Jack R. Goldberg, a nominal appellant herein. The caseworkers, who are required to make the periodic home visits to recipients of Aid to Families with Dependent Children, which visits were found constitutionally defective by the Court below, form the principal component of the bargaining unit represented by the *Amicus* and patently will be directly and significantly affected by the outcome of this appeal.

This *Amicus* brief in support of Appellee James and the class she represents is prompted by the concern of the caseworkers and their union that the useless and demeaning practice of the mandatory non-consensual home visit be discontinued.

The parties have consented to the filing of an *amicus curiae* brief by the Social Service Employees Union Local 371. Copies of the letters evidencing these consents are filed with this brief.

Summary of Argument

The burden of the State's argument that the Fourth Amendment's requirement of a warrant should not be applied to the mandatory home visit rests on two premises, both factually insupportable: that the visit is indispensable both to the verification of eligibility for assistance and to the safeguarding of children's welfare. In fact the very utility of the mandatory home visit is questionable both in theory and practice. Further, the inherently degrading nature of the mandatory home visit requires its abandonment.

Argument

Appellant Wyman relies heavily on the assertion that the mandatory home visit "serves a host of compelling State interests," stating initially that "it serves to verify that all of the criteria of eligibility for assistance are met and to insure that funds are allocated only to eligible people and in the amounts necessary [and] it serves to insure that the welfare of the child is being safeguarded." (Appellant Wyman's brief, p. 13.) Subsequently, Appellant argues somewhat less forcefully that the home visit is merely "an *aid* in determining eligibility . . .," and "a *means* of assuring" proper allocation of funds to the children. (Appellant Wyman's brief, p. 19; emphasis ours.) It is the aim of this brief to demonstrate that, contrary to the State's assertions, the mandatory home visit does not possess the compensating values appellant has assigned to it.

POINT I

The mandatory home visit does not serve to insure the welfare of the child in an AFDC home.

The State argues convincingly that welfare children are "peculiarly susceptible to the hazards of life, to neglect and even abuse not necessarily for want of love, but for want of means." (Appellant Wyman's brief, p. 22.) Yet, the State then indulges in a *non sequitur* by suggesting* that welfare clients categorically are incapable of caring for their own children as a justification for the mandatory home visit of the caseworker every three months. More-

* For example, "Thus, the recently much discussed problems of child neglect and abuse are inherently more prevalent in assistance households . . . ." (Appellant Wyman's brief, p. 22.)

over, it ill behooves the State, which has recently reduced payments to welfare recipients, to rely upon the condition of poverty as the predicate for a non-consensual intrusion to protect the child from its fruits. See *Rosado* v. *Wyman*, —— U.S. ——, 38 U.S.L. Week 4266 (April 6, 1970). Indeed, there is something basically repugnant about the State's implicit and blanket indictment of welfare parents as prone to child neglect and abuse, and its not so subtle recitation of Mrs. James' child's injuries. (Appellant Wyman's brief, p. 22.) It is a truism that welfare clients are not a homogeneous group and the categorical approach to them is fundamentally dangerous.

In practice, welfare children are not protected and at best minimally served by the mandatory home visit. Initially, there is no requirement that a caseworker have any contact with the child when he visits the home, and if the child is of school age, it is highly unusual for the caseworker ever to see him during his daytime visit. (See generally, City of New York Department of Social Services, *Policies Governing the Administration of Public Assistance* (reissued 1967).)

The mandatory home visit usually is brief and sketchy. "Typically, . . . a worker will enter a client's apartment, remain standing with his coat on, and leave after a cursory discussion about the client's needs." Graham, *Civil Liberties Problems in Welfare Administration*, 43 N.Y.U.L. Rev. 836, 853 (1968). The emphasis of the visit is on eligibility.*

* The Moreland Commission described a typical visit:

"The caseworker diligently reviewed the information on the eligibility form, PA 101, with little discussion if any of the items. At one point, for instance, the man said that his father had died in New York City. He started to say they had gone to a ball game but the worker went on to the next item with-

Moreover, caseworkers are either badly trained or untrained, and even when given the opportunity to see a child during a visit, often miss discovering visible signs of neglect or abuse, e.g., malnutrition. *Report to the Moreland Commission, supra,* p. 81.

Not only is the substance of a mandatory home visit unproductive, but also the ability of a caseworker to utilize the home visit as a step to providing "child protective services" is severely circumscribed. Generally, a caseworker is not only poorly trained, but also young and inexperienced; there is a high turnover rate and this together with the constant shifting of clients and caseworkers from one caseload to another, results in unfamiliarity with individual families. A close and informed relationship between a caseworker and a client family is rarely established. COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES (transmitted by the U.S. Department of Health, Education and Welfare, and the New York State Department of Social Services), *Report of Findings of Special Review of Aid to Families with Dependent Children in New York City* (1969), pp. 51, 128 (hereinafter, *Report of Findings of Special Review*). In addition, the internal workload pressures from the Department of Social Services are inimical to the provision of any protective services.

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out waiting to hear any more of the account. At another point, the man said that he had got behind in meeting the payments on his many debts because of the emergency created when his sister was killed in an accident leaving two infants. Again the worker did not pause to hear anything about this family tragedy. Nevertheless, the worker's attitude was pleasant and non-judgmental, but entirely impersonal." Greenleigh Associates, Inc., *Report to the Moreland Commission on Welfare of Findings of the Study of the Public Assistance Program and Operation of the State of New York* (1962), pp. 51-52 (hereinafter, *Report to the Moreland Commission*).

"Caseloads are larger than they should be and paperwork consumes vast amounts of the workers' time. It appeared that the responsibilities of the workers were unreal, making it practically impossible for the workers to satisfactorily complete all the mandated duties. Three welfare commissioners concurred that an allocation of 50% of a worker's time to 'paper work' was unreasonable and tends to result in less time devoted to helping the clients." State of New York, *Public Welfare in Transition, Report of the Joint Legislative Committee to Revise the Social Services Law of New York State* (1969), p. 57 (hereinafter *Report of the Joint Legislative Committee*).

"The caseworkers interviewed said that the major portion of their time was spent reviewing eligibility, changing grants, changing addresses and reissuing, at least in part, lost or stolen assistance checks or money. Emergency services rendered at time of crisis in the family accounted for most of the service time." *Report of Findings of Special Review, supra,* at p. 113.

Staggeringly high caseloads carried by the individual caseworker render unsupportable the State's assertion that the caseworker assesses "total parental functioning and home conditions" and their effect upon the welfare child. (Appellant Wyman's brief, p. 20.) New York State's Joint Legislative Committee reports the following description from a welfare commissioner:

"It will be impossible to provide the needed social services to disadvantaged citizens unless the caseload for multi-problem families is reduced to 25 or 30. Most caseworkers are expected to care for all categories among their 70 cases. The typical load now

is about 35 Aid to Dependent Children cases, 20 Home Relief and 15 Old Age Assistance. Can you imagine the time a caseworker can give to one broken family consisting of a mother with perhaps 6 or more children each of whom has a services problem of health, or education or environment? Then multiply this by 10 or 20 or 30. . . ." *Report of the Joint Legislative Committee, supra,* pp. 57-58.*

The present experimentation with the affidavit system contradicts the notion that the mandatory home visit is actually relied upon to insure the welfare of the child. Under this program, the mandatory home visit is done away with in all but a small percentage of the cases, and in those cases remains only as a spot check. 45 C.F.R. Ch. 2, §205.20. If the mandatory home visit truly were relied upon by the State to protect a child from his parents, as the State insists in its brief, then the State could not countenance this new system where children are left entirely in the care of their own parents.

The decision of the Court below does not prevent the State from protecting the children; it merely requires that the Department of Social Services must have and demonstrate reasonable cause to believe that a problem exists before an invasion of the home will be permitted. Such a procedure is more likely to protect children, since caseworkers sent out with specific warrants would, in these

* Subsequent reorganization of the Department of Social Services has removed from the caseload those cases requiring the least attention, resulting in a parallel increase in multi-problem cases per caseload. In addition, the caseload itself has grown larger. In fact, the current contract with the *Amicus,* anticipating this situation, provides for monetary penalties to be paid caseworkers for excessive caseloads.

circumstances, be investigating precisely the safety and well-being of the children involved.

Consensual home visits would continue. Indeed, these visits may then become more effective: the social services work would be more intensive and clients choosing to avail themselves of these services, more receptive.*

POINT II

The mandatory home visit is ineffective and unnecessary for the verification of eligibility.

The mandatory home visit as a method of eligibility investigation has proved to be self-defeating,** and in fact

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* "Nothing is more debilitating, more conducive to 'giving up' than a sense of helplessness, of being the passive victim of circumstance.

"The history of the last few years indicates that any movement which gives people a sense of taking into their own hands the planning of and responsibility for their own lives leads to a diminution of the symptoms of decay." State of New York, *Report of the Joint Legislative Committee on Child Care Needs* (1968), p. 58.

** The Moreland Commission Report stated:

"The public welfare departments have an overconscientious concern with keeping off the rolls any who might by any technicality be considered to be ineligible. This precludes attention to those who could be rehabilitated and restored to self-care or self-support." Greenleigh Associates, Inc., *Report to the Moreland Commission on Welfare of Findings of the Study of the Public Assistance Program and Operation of the State of New York* (1962), p. 2.

The Joint Legislative Committee to Revise the Social Services Law of New York State held public hearings on eligibility determination:

"It was felt the determination of eligibility is an extremely complex, time consuming, and degrading process. Many of the participants were extremely critical of this process and

is ineffective in preventing or discovering ineligibility or fraud.

The study conducted for the House Committee on Ways and Means by the Department of Health, Education and Welfare and the New York State Department of Social Services demonstrates this. The study showed that 55.9%* of the families on AFDC either are ineligible under present requirements, are receiving more than they deserve, or are receiving less than they deserve. *Report of Findings of Special Review, supra,* p. 181, Table 2. The Comptroller General estimated that approximately $6.7 million per month in New York City alone was either spent or withheld improperly, and concluded:

> "Since the quality control system administered by NYSDSS did not alert responsible officials to the high rate of ineligibility found in the special review, GAO believes that changes in the quality control system are needed." *Report of Comptroller General, supra,* p. 3.

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said that, more than any other feature of the welfare programs, it is the determination of eligibility which causes much hostility between the worker and the clients. It was stated by several people that applicants for welfare are treated as if they all were trying to cheat the system and thus, are subjected to an excessively detailed investigation and verification of all of their statements. Such a process, according to the participants, is offensive, demeaning and dehumanizing." *Report of the Joint Legislative Committee, supra,* p. 60.

* The Comptroller General of the United States arrived at a figure of 59.7% in a concurrent study for the same House Committee, Committee on Ways and Means, U.S. House of Representatives (Comptroller General of the United States), *Report to the Committee on Ways and Means U.S. House of Representatives by the Comptroller General of the United States* (1969), p. 2 (hereinafter, *Report of Comptroller General*).

These figures and conclusion come as no surprise to those familiar with welfare administration and the nature of the mandatory home visit. The home visit simply is not reasonably related to the discovery of many forms of ineligibility or overpayment. One striking example is in the matter of rent determination.

The House Committee report found that "Rent errors frequently arose when the agency failed to verify the maximum amount legally set for a particular dwelling, and included for rent the amount actually paid. If the amount charged by the landlord exceeded the legal maximum, this was classed as an overpayment." *Report of Findings of Special Review, supra,* p. 182.

Perhaps the ultimate example of the irrelevance of the mandatory home visit to the verification of eligibility is that of Mrs. James, whose case record the State has chosen to bare for this Court. Until Mrs. James refused to admit her caseworker in May of 1969 she had been subjected to the ordinary number of mandatory home visits, yet the State admits on page 23 of its brief:

> *"Indeed,* appellee has never satisfactorily established her initial eligibility for assistance . . ." (emphasis ours).

In addition, the very safeguards cited by the State as protecting a client from an agency worker (Appellant Wyman's brief, p. 28), when observed, must, logically, hamper severely the ferreting out of fraud and ineligibility.*

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* The *Handbook of Public Assistance Administration* restrains caseworkers from:

In fact, the State itself admits that "Indeed, the home visit is not the chief, or even a significant means, of obtaining evidence of fraud (A. 115-116)." (Appellant Wyman's brief, p. 35.)

The State presently has at its disposal another, more efficient and less demeaning, method of eligibility determination—the affidavit system—which holds promise of better serving the public interest.

> "Evidence that 'red tape' strangles efficient operation is great. The Committee believes that given the enormous staff turnover, high cost of administration, poor and uneven quality of social services, that substitution of an 'affidavit' system to determine eligibility, rather than requiring individual verification in each case, would be more desirable and, in the long run, promote greater efficiency and even economy. In addition, it is less degrading and demeaning to the applicant. Such a system, with spot-checks used in a fashion similar to the Internal Revenue Service, would free staff to spend their time as counsellors and helpers rather than investigators. The public interest would be as well, and possibly better served, if more time were spent helping people on assistance get off the rolls, rather than in investigating them to make certain they should remain on assistance. Experimentation in New York City in two centers has shown a creditably low level of ineligibility using the affidavit

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"entering a home by force, or without permission, or under false pretenses; making home visits outside of working hours, and particularly making such visits during sleeping hours; and searching in the home, for example, in rooms, closets, drawers or papers, to seek clues to possible deception." *Handbook of Public Assistance Administration*, Part IV, §2300 (a).

approach." *Report from the Steering Committee of the Arden House Conference on Public Welfare* (appointed by Governor Rockefeller) (1968), p. 27.

Incidence of ineligibility under the affidavit system has not risen from that under the system of detailed investigation. The New York City Department of Social Services has stated in its official publication, *Welfarer,* that the affidavit system "determine(s) eligibility at least as effectively" as does the system of detailed investigation (including the mandatory home visit). *Welfarer,* Vol. 1, #5, Sept. 1969, at p. 2. In fact, a study by the City University of New York has concluded that if proper statistical methods were used to compare the data, ineligibility under the affidavit system would be lower than under the investigative system. The study also reported that most cases of ineligibility "were of a marginal or petty nature." Center for Social Research, Graduate Center, The City University of New York, *Evaluation of the Welfare Declaration: Eligibility Simplification for Public Assistance in Two Centers of the City of New York Department of Social Services,* p. 3.

Rather than dispense with the demeaning and demonstrably ineffective mandatory home visit system, the State seeks to justify the continuation of that system by referring to the "special grant" practice which it statutorily abandoned in 1969. (See Appellant Wyman's brief, p. 23.) Appellant cites *Rosado* v. *Wyman,* —— U.S. ——, 38 U.S.L. Week 4266 to imply the imminent return of special grants. However, this Court stated in that case:

> "Lest there be uncertainty we also reiterate that New York is not foreclosed from accounting for basic and

recurring items of need formerly subsumed in the special grant category by an averaging system like that adopted in the 1968 New York City experiment with cyclical grants." *Rosado* v. *Wyman*, —— U.S. ——, 38 U.S.L. Week at 4272.

POINT III

The mandatory home visit in design and effect is degrading to the welfare recipient.

The time has come to stop and consider the implications of a mandatory home visit. The State is doing more than simply invading the sanctity of the home; it is threatening a usurpation of the private lives of the individuals involved. The explicit language of 18 N.Y.C.R.R. §369.2(c) is evidence of the extent of this threatened invasion of privacy:

> "(c) *Welfare of child or minor.* A child or minor shall be considered to be eligible for ADC if his home situation is one in which his physical, mental and moral well-being will be safeguarded and his religious faith preserved and protected. (1) In determining the ability of a parent or relative to care for the child so that this purpose is achieved, the home shall be judged by the same standards as are applied to self-maintaining families in the community. When, at the time of application, a home does not meet the usual standards of health and decency but the welfare of the child is not endangered, ADC shall be granted and defined services provided in an effort to improve the situation."

This kind of regulation when implemented by the mandatory home visit leads to the client's losing control of his own life.

> "Recipients become vulnerable not only to the punitive, moralistic official but also to the overzealous, well-intentioned but mistaken official, the social therapist who is certain that he knows what the client 'needs'." Handler and Rosenheim, *Privacy in Welfare: Public Assistance and Juvenile Justice,* 31 Law & Contemp. Prob. 377, 393 (1966).

The State has suggested that its procedural safeguards protect the dignity of the welfare client, but they hardly go to the root of the matter. Furthermore, these safeguards are not always observed by the caseworker, and enforcement is lax. Visits are supposed to be made by appointment, yet in practice this is not always done (see the affidavits of welfare recipients, Appendix pp. 33-56). The policy of the Department of Social Services on this matter was expressed by Jack R. Goldberg, Commissioner, in a letter dated April 11, 1969, attached to plaintiffs' supplemental memorandum in the Court below:

> "Caseworkers are encouraged . . . wherever . . . practicable to . . . send notice of such visits to recipients. However, failure to give such notice is not a valid basis of refusing admittance to the caseworker, and such refusal . . . will be considered a basis for . . . (consideration of discontinuance of recipient's funds)."

Only the worker himself judges whether the giving of notice is or is not "practicable". Obviously, an unexpected visit may well be inconvenient and embarrassing to the client.

Caseworkers, inexperienced and untrained though they may be, have considerable discretion as to the questions they ask and the extent of the investigation they make. (See generally, The City of New York Department of Social Services, *Policies Governing the Administration of Public Assistance* (reissued 1967).) Any violations of regulations they commit are likely to remain unreported and uncorrected, for the stance of the recipient is one of insecurity and financial dependency.

CONCLUSION

The decision of the Court below should be affirmed.

Respectfully submitted,

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REPLY

BRIEF

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT WYMAN

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REPLY BRIEF FOR APPELLANT WYMAN

A.

Although appellees and all of the *amici curiae* roundly condemn the home visit, each affirms, implicitly or directly, the power of the administrative agency to secure relevant

information about its applicants and recipients. (See Brief for Appellees [hereinafter Br.] p. 12; Brief for the Legal Aid Society of San Mateo County as *Amicus Curiae* [hereinafter San Mateo] p. 6; Brief for the Social Service Employees Union Local 371, AFSCME, AFL-CIO, *Amicus Curiae* [hereinafter Union] pp. 8-13; Brief *Amicus Curiae* of the National Welfare Rights Organization [hereinafter NWRO] p. 14.) Moreover, with one exception (Union, see *infra*, p. 6), not one of them denies that the home visit can furnish such relevant information. Notwithstanding this, it is contended "that mandatory routine home visits are never constitutionally permissible" (Br. p. 11).

The notion that an investigatory procedure closely related to an important interest can never be valid is scarcely "traditional and unquestionably proper Fourth Amendment Law" (San Mateo, p. 4). It is, instead, a unique constitutional doctrine the stated reasons for which in no way sustain it. First, it must be reiterated that a reasonable procedure is not made unreasonable because alternative methods of achieving the same end exist (Appellant's main brief [hereinafter Main brief] pp. 29-31). Second, the multiplication of possible "alternatives" in the various briefs merely highlights the fact that there is no substitute for direct personal observation. Thus, it is suggested that checking names on mailboxes is all that is necessary to verify technical eligibility criteria (San Mateo, p. 6, n. 4). Of course, there may be no mailboxes, there may be no names on the mailboxes and a name on a mailbox says nothing about who lives in the residence.

Similarly, the much-touted office visit (Br. p. 12), is no substitute. First, this is simply the declaration system presently in effect on a limited experimental basis (Main brief, pp. 24-27). Second, its dubious adequacy is easily revealed in the instant case where lack of candor and unwillingness to supply basic information has been a serious problem (Main brief, p. 23). Third, the office visit

tells little or nothing about the home in which the child is being raised. It provides only such information as the client wishes to provide and not necessarily such information as the agency must obtain to allocate money and services appropriately for the protection of the children involved.

It is at this child welfare aspect of the home visit that all parties balk most vehemently. The argument runs generally that the State is seeking to act in *loco parentis* for a specific class of children, that such classification is unreasonable and that, in any event, services are optional and may be rejected (Br. pp. 7-11; San Mateo, pp. 10-14; Union, pp. 4, 7; NWRO, pp. 12-14).

At the heart of this argument is the contention that, once a family has been identified as being in need of financial assistance, and such assistance is furnished, the family becomes indistinguishable from the general population with respect to the welfare of its children and the State has no greater interest in those children than in any others.

The argument overlooks one vital factor. The only purpose of the AFDC program, as it presently exists, is the welfare of children. Aid is not even furnished unless the family unit cannot survive without it. It is completely unreasonable, then, to say that the agency with which the adult client has sought and acquired a special relationship, has no interest in determining whether the aid it furnishes is needed, is adequate and is working. And the area in which it must work is the welfare of the children. The charge of paternalism which this concern draws down is a shibboleth intended to end argument. It does not support constitutional effacing of the direct responsibility which the agency has had placed upon it by the "caretaker relative" (NWRO, p. 4) and which it must take reasonable steps to discharge. There is general agreement that an adequate assistance program must furnish services as

well as money. It may be that the State can disown any responsibility for its agency to inquire into the minimal adequacy of the home and have the agency act simply as a conduit for funds. But to say that such a step is required by the constitution or by statute (*infra*, pp. 11-12), is erroneous and dismayingly shortsighted.

Nor does the argument gain validity from the contention that there is no requirement that the child be at home during the visit (NWRO, p. 10; Union, p. 4). The flaw in this absent child argument is clear. "The fact that the welfare of the child is being safeguarded shall be confirmed at each regular contact with the family and as part of the periodic redetermination of eligibility . . ." 18 N.Y.C.R.R. § 369.4(b)(1). Should the child be absent, and should the worker observing the home atmosphere feel that it is necessary to see the child, the worker can and must arrange to see him, in the home if need be. In this case, the child was not absent during home visits and, consequently, the issue did not arise.

However, a particularly grim but forceful example showing how a worker can act when a child is absent and showing, too, the necessity and value of the home visit to verify the adequacy of care in general has just come to light in New York. See N. Y. Times, Oct. 2, 1970, p. 20, col. 3.*

On September 29, 1970, a caseworker in the Bronx made a recertification visit to a household which she was informed consisted of a mother, a five-year-old boy, a three-year-old girl and a three and one-half-month-old baby girl. The worker had been assigned recently to the case and had never met the family. The family had not been visited for about six months (see A. 17).

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* The outline of this case was reported in the newspapers. We have filled in the details from information on file at the New York State Department of Social Services.

When the worker arrived at the home she found the mother and the oldest child. She noticed that the mother was an "obsessive" watcher of television and that her answers were "short" and "unresponsive". The mother did say that the infant was with its maternal grandparents on Staten Island and that the middle child was with a neighbor, but she could not or would not say which neighbor.

The household atmosphere sufficiently disturbed the caseworker so that she discussed it with her supervisor who suggested contacting the grandparents. A telephone call revealed that the infant was not with them. Thus alerted, the grandparents went to the household and brought the mother and oldest child to the local welfare center. The supervisor at the Center then called the police who discovered in the apartment the battred body of the infant and the starved body of the three-year-old. Both had been dead for at least a month.

Though extreme, this case demonstrates that it is far from unrealistic or unreasonable to use the home visit as a means to assess the ability of the head of the household to keep the household together. For if it cannot be kept together, despite financial assistance, the answer is not to "deny aid" to the child (NWRO, p. 4), but to change its nature. The fear enunciated by appellees that the home visit raises "the implicit threat of filing neglect petitions which may lead to the loss of children" (Br. p. 13) is an astonishing exaltation of the "privacy" of the mother over the welfare of the child. The home visit just described, if it did nothing else, raised the question of the adequacy of the home of the surviving child. See also *Matter of Efrain C.* (Fam. Ct.), N. Y. Law Journal, Sept. 16, 1970 (p. 21, col. 4) in which Judge Dembitz indicated that perhaps more frequent and not necessarily scheduled, home visits are in order.

Appellees further insist that one of the purposes of the home visit is "making criminal referrals" (Br. p. 7). No

case is cited to support a claim that this is true. Certainly there are statutes enabling prosecution for welfare fraud. However, these statutes apply to all aspects of such fraud and not just to what may be discovered during home visits. Yet these statutes are not even argued to bar investigation outside the home. Certainly the visit is not designed for that purpose (Main brief, pp. 27-29, 33-35). By contrast, in *Camara* v. *Municipal Court,* 387 U. S. 523, not only did refusal to permit entry result in criminal prosecution, but the violations for which the inspector was looking were crimes. *Id.* at 531. The attempt to equate the situation in *Parrish* v. *Civil Service Commission of the County of Alameda,* 66 Cal. 2d 260, 425 P. 2d 223 (1967), with the home visit (San Mateo, pp. 7-9), is wrong. The midnight invasion in that case was not a home visit in any sense of the word. It was a raid for criminal purposes and does not even remotely resemble the home visit. Should evidence of crime be uncovered, and prosecution result, the issue becomes one which can be dealt with at the criminal proceeding. See *United States* v. *Chikata,* 427 F. 2d 385, 390 (9th Cir. 1970).

Somewhat inconsistent with the position that the home visit may lead to criminal prosecution is the position taken by one *amicus curiae* that it leads to nothing at all (Union, *passim*). The basic reason for this is not that the home visit cannot be a useful tool, but that it is not because the visit is "brief and sketchy" (Union, p. 4), and workers are "not only poorly trained, but also young and inexperienced" (*id.* p. 5) and carry "[s]taggeringly high caseloads" (*id.* p. 6). If the members of Local 371 are incapable of doing their job, that is a disaster for agency and client. But the solution is not an irrevocable constitutional prohibition against conscientious and unskilled alike. Nor is the contention seemingly accurate either for New York City or for other caseworkers throughout the State and country. Indeed, this viewing with alarm is not justified by any of Mrs. James' caseworkers (Exh. 1 an-

nexed to complaint), or by the caseworker described above (pp. 4-5), or by a most recent example of a home visit which, again, epitomizes its reasonableness and constructive use.

In connection with the sample cases by which the experimental system of simplified eligibility was judged (Main brief, pp. 24-27), a home visit was made to a family in New York City with the following results:

> "B_____, J_____. . .
>
> Accepted on 12-19-69 because client stated her husband had deserted family in 10-69. The worker visited on 2-2-70 and found Mr. B_____ in the home and . . . earning $79.40 week net. Mrs. B_____ admitted to the worker that her husband had not deserted the family but has on occassion [sic] stayed out overnight when he gets drunk. There was a court hearing on 12-18-69 at which time the family was referred to marriage counselor. On 12-19-69, the Department authorized $370.45 for rent arrears and food. This was the only grant on this case and the case was closed 2-10-70 after the reviewer notified the Center that Mr. B_____ was in the home. Grant issued $370.45." (Report of the New York City Department of Social Services, April 15, 1970, forwarded to the Regional Commissioner of the Dept. of HEW, with respect to validation under SRS Program Regulation 10-3) (unpublished) (name and case number omitted).

This case history shows, first, that the home visit can verify eligibility where other methods are doubtful (in this case the method was declaration). It shows, second, that deliberate misrepresentation by a woman with a family who needs help of some sort is not handled by criminal prosecution or by ignoring the need for help. The result of this home visit was that appropriate help was provided and a grant for arrears made while an ineligible family

was not placed on the AFDC rolls. Thus, even the declaration system would be impaired if necessary home visits were constitutionally prevented.

This history also belies the contention (Union, p. 10; NWRO, p. 10), that since workers can neither force entry nor pry into closed places, their effectiveness is limited.* However, the possibility that there is concealed evidence of fraud is not the point. The home situation can be assessed for safety, adequacy and other factors of eligibility without such intrusion. (It might be noted that the claim that health and safety concerns are not factors in the home visit [San Mateo, p. 15], is inaccurate). Moreover, the case history above belies the argument that the home visit does not keep ineligible people off the rolls. This argument (Union, p. 8-12), in fact, is rendered meaningless by the asserted inability of the Local's members to function adequately. Finally, we have no idea what the number of ineligible recipients would be without even allegedly inadequate home visits.

B.

Aware perhaps of the forcefulness of the arguments in support of the home visit, appellees grudgingly allow that "if this Court were to find that home visits were sometimes permissible the visits would have to be made with a warrant" (Br. p. 11). The nature of the warrant desired is lamentably unspecific. It is suggested that it would be for a "civil home visit" (Br. p. 11). It is also suggested that it be on "traditional standards of probable cause" (San Mateo, p. 17), although even then, the problem of whether it would be for criminal charges only is left unanswered. It is not suggested by any brief that it could be issued simply because it was time for a home visit. Yet

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* This plaint of the inability to abuse the home visit highlights the fact that although appellees assert that "abuses" occur during such visits (Br. p. 15), they have yet to detail a single one.

any more specific warrant would change the nature of the visit, even though the periodic visit is reasonable, and a warrant based on time alone is unnecessary and inappropriate in this context (Main brief, pp. 36-40).

In fact, any warrant procedure, either as designed for civil inspection or for criminal purposes, is inapposite to the home visit situation. At least one *amicus* acknowledges the inapplicability of the civil inspection rationals as set forth in *Camara* v. *Municipal Court, supra* (San Mateo, pp. 15-16), but appears to insist on the criminal rationale, perhaps without a showing of criminal probable cause (*id.* pp. 16-17). However, this approach is simply another means of arguing that the periodic home visit is "inherently unreasonable" (*id.* p. 16). But, the inapplicability of *Camara* does not make the home visit unreasonable. It merely makes it unsuspectible to the rationale of that case.

In the first place, the home visit is not a search in the criminal sense or even in the *Camara* sense. Appellees' use of the word "search" (Br. p. 11), apparently in the mistaken belief that they must use it in order to claim the protection of the Fourth Amendment, obscures the facts. The home visit is essentially an interview coupled with observations of the home which enable the caseworker to assess those aspects of the home on which eligibility and extent of need are based. It involves urban and rural households, apartments and hotel rooms. It may result in protective services, new lodgings, repairs. It may result in no changes. But the congeries of factors involved in a meaningful home visit are not subject to isolation. In the case described above (pp. 4-5), no warrant could have issued for any isolated factor before, or even after, the home visit.

A warrant authorizes forcible entry. However, as the briefs point out, "entry by force, or without permission" is strictly forbidden. HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION, Pt. IV, § 2200(a). Any warrant would

be far more intrusive than the current practice. For, if permission to enter is denied, there is no entry, as there was none in this case and the Fourth Amendment does not even come into play. The question becomes, then, whether the consequences of a denial of entry so burden the exercise of the Fourth Amendment right of privacy as to be a violation of the right itself. The basic answer is, as we have said, that the reasonableness of the visit coupled with the inappositeness of the warrant negate any idea that a burden is created (Main brief, pp. 32-40).

Moreover, there already exist protections for the AFDC client which do as much, if not more than, the warrant procedure does in the criminal and civil inspection fields. These procedures are related to the nature of the rights and duties involved in the same way that warrant procedures protect people in the other fields.

In short, the final answer to the proposed superimposition of a warrant procedure on the home visit is the decision of this Court in *Goldberg* v. *Kelly*, 397 U. S. 254. After that decision, termination of assistance cannot be the direct consequence of refusal to permit a home visit.

Should the refusal create an impasse between agency and client, the only direct consequence is a hearing. Such a hearing cannot be described as a "burden" any more than can a warrant procedure in the analogous cases relied on. This hearing is held not only prior to any termination of assistance but *prior* to *entry* into the home. Unlike a warrant application, which is *ex parte*, the hearing for the AFDC client provides a full opportunity to be heard before any decision is reached. Should the hearing result in a determination that the visit be made, the client's dignity is preserved by leaving open the option to permit the visit or terminate the relationship.* At the end of an *ex parte*

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* Of course, if there is any indication that the child's needs will be ignored or threatened by such termination, steps must be taken simultaneously to protect the child.

application for a warrant, the result may be authorization of a forced entry.

The administrative hearing officer can consider all aspects of the controversy taking account of any alleged abuses or fear of abuses the status of the determination of eligibility and the necessity for the visit. Only, then, in the face of blanket, arbitrary refusal to permit a necessary home visit, after a hearing, as in this case, would assistance be terminated. This is borne out by the fact that appellee, although she purports to represent a class, can point to no other case in which assistance has been terminated solely for refusal to permit a home visit and we are aware of none. The administrative hearing is thus a more than complete counterpart of the judicial hearing in cases where there is no continuing relationship between agency and party and for which judicial intervention is necessary to establish the need for and extent of that relationship (Main brief, pp. 37-38).

C.

The appellees and *amici curiae* assert several statutory arguments against the home visit.* First, it is argued that requiring compliance with the home visit requirement adds a new standard of eligibility (Br. p. 11, n. 1; NWRO, pp. 3-9). Compliance with the requirement that information be furnished is not a separate standard and to say that termination denies aid to "someone otherwise eligible" (*id.*), begs the question. The home visit furnishes necessary information about eligibility. If the information is not furnished, the agency cannot know if the applicant or recipient is eligible and cannot furnish assistance.

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* It was suggested to the District Court that the home visit requirement conflicted with federal statutes and regulations. However, these arguments were not detailed and the District Court never passed upon them. *Wyman* v. *Rothstein*, 398 U. S. 275; *Dandridge* v. *Williams*, 397 U. S. 471.

The cases relied on for this argument, *Doe* v. *Shapiro*, 396 U. S. 488; *Solmon* v. *Shapiro*, 396 U. S. 5 and *King* v. *Smith*, 392 U. S. 309, deal with extrinsic matters going to responsibility for child support. Neither suggests that the agency which accepts the responsibility cannot verify the need for and efficacy of assistance. In any event, the argument goes too far. For it would strike down any demand for verification as establishing an impermissible criterion of eligibility.

Finally, it is argued, that federal regulations expressly prohibit declining assistance for failure to permit a home visit (San Mateo, pp. 18-20; NWRO, pp. 10-11). On the contrary, those regulations require at least some home visits. Reliance is placed on the regulation prohibiting "entering a home by force, or without permission." *Handbook of Public Assistance Administration*, Pt. IV, §2200(a). The argument that entry under the "threat" of termination violates this regulation is unsound. The regulation which was meticulously observed in this case, in which no visit was made, obviously deals only with procedures to be employed in making home visits. It does not deal with whether or not such visits may be required. Indeed, the home visits, which are required for sample purposes by the federal government, are also governed by that regulation. Last, the home visit has long been part of the New York State plan and has yet to be disapproved by the Department of Health, Education and Welfare which promulgated the regulation relied on.

CONCLUSION

The decision below should be reversed and the complaint dismissed. In the alternative, the case should be remanded with instructions to hold a trial or to refer the appellee to her State remedies.

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Respectfully submitted,

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